



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/597,145	06/20/2000	Tsukasa Ogino	35.C14572	5116

5514 7590 12/07/2004

FITZPATRICK CELLA HARPER & SCINTO  
30 ROCKEFELLER PLAZA  
NEW YORK, NY 10112

EXAMINER

FLYNN, KIMBERLY D

ART UNIT	PAPER NUMBER
----------	--------------

2153

DATE MAILED: 12/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/597,145

**Applicant(s)**

OGINO, TSUKASA

**Examiner**

Kimberly D Flynn

**Art Unit**

2153

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 June 2000.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-177 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 30-59,89-118 and 148-177 is/are allowed.
- 6) ☒ Claim(s) 1-28,60-87 and 119-146 is/are rejected.
- 7) ☒ Claim(s) 29,88 and 147 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-3, 5-11, 13-19, 21, 24-28, 60-62, 64-78, 80, 83-87 and 119-121, 123-146 are rejected under 35 U.S.C. 102(e) as being anticipated by Johnson et al. (U.S. Patent No. 6,205,477; hereinafter Johnson).

In considering claims 1, 60, and 119, Johnson discloses a system and method for controlling a network status server comprising:

a logical distance obtaining step of obtaining respective logical distances between respective sites provided with dispersed/arranged information distribution servers and an accessed client (col. 5, lines 43-50); and

site determining step of determining an optimum site from said respective sites based on said obtained logical distance(col. 5, lines 50-59).

In considering claims 2, 18, 61, 77, 120, and 136 Johnson discloses that the logical distance obtaining step comprises obtaining the logical distance from a route server comprising means for obtaining the logical distance to a predetermined network address from path information between the sites (col. 5, lines 34-42).

Art Unit: 2153

In considering claims 3, 19, 62, 78, 121, and 137 Johnson discloses that the network status server comprises path information storage means (routing tables), said network status server control method further comprises a path information storing step of storing the path information between the respective sites and the client, and when the path information is stored in the path information storage means, the logical distance obtaining step comprises obtaining the logical distance from the path information stored in the path information storage means (col. 5, lines 43-47).

In considering claims 5, 64, and 123 Johnson discloses that the site determining step comprises determining the site in which the respective logical distance between said respective sites and said client are minimum as the optimum site (col. 8, lines 20-23).

In considering claims 6, 7, 9, 65-66, 68,124-125, and 127 Johnson discloses the determining step of determining the optimum information distribution server from the information distribution servers in the optimum site determined in said site determining step based on a predetermined condition (col. 3, lines 41-49).

In considering claims 8, 67, and 126, Johnson discloses that the server determining step comprises determining the information distribution server determined in a predetermined order as the optimum information distribution server (col. 7, lines 65-67 through col. 8, lines 1-2).

In considering claims 10-11, 21,34, 36, 69-70, 80, 128-129, and 139, Johnson discloses that the state information collecting step of collecting and storing state information in the site provided with the dispersed/arranged information distribution servers, wherein the server determining step comprises determining the optimum

Art Unit: 2153

information distribution server using the collected and stored state information in the optimum site as a condition (col. 9, lines 37-51 and col. 10, lines 3-12).

In considering claims 13, 24, 37, 72, 83, 124, and 131 Johnson discloses the state information storing step comprising approximating and storing the state information in the site be a predetermined approximation equation (col. 7, lines 43-55).

In considering claims 14, 26, 73, 85, 132, and 144 Johnson discloses wherein the state information in the site comprises at least one information of the network state information in the site and the state information of the information distribution server in the site (col. 8, lines 37-39).

In considering claims 15-16, 25, 74-75, 84, 86-87, 133-134, and 143, Johnson discloses the network state information in the respective sites provided with the dispersed/arranged information distribution servers is collected, the collecting step comprises collecting at least one of a congestion degree (request percentage), a response time, number of router steps, packet loss ratio, number of packets, number of packet errors in the respective sites, CPU load ratio, a CPU idle value, number of connection links, and a disk load ratio of the information distribution server (col. 9, lines 37-40).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 2153

4. Claims 4, 12, 20, 22-23, 63, 71, 79, 81-82, 122, 130, 138, and 140-141 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson.

In considering claims 4, 20, 63, 79, 122, and 138, although Johnson discloses the system substantially as claimed, Johnson does not disclose that when there is no access from the client for a predetermined period, the path information storage means discards the path information between the respective sites and the client. Nonetheless, it would have been obvious to a person having ordinary skill to modify the system as disclosed by Johnson to include the steps of storing the path information for a predetermined amount of time and discarding the path information when there is no access to the client for a predetermined amount of time in order to save memory space. Therefore that aforementioned limitations would have been and obvious modification.

In considering claims 12, 22-23, 71, 81-82, and 140-141, although Johnson discloses the system substantially as claimed, Johnson does not disclose that the state information storage means stores the stored state information means for a predetermined period and when there is no access from the client for a predetermined period, the state information storage means discards the state information between the respective sites and the client. Nonetheless, it would have been obvious to a person having ordinary skill to modify the system as disclosed by Johnson to include the steps of storing the state information for a predetermined amount of time and discarding the state information when there is no access to the client for a predetermined amount of time in order to save memory space. Therefore that aforementioned limitations would have been and obvious modification.

Art Unit: 2153

*Conclusion*

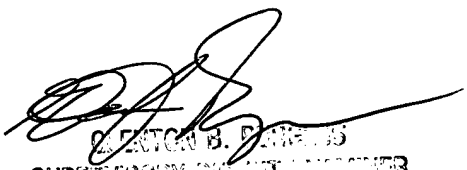
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly D Flynn whose telephone number is 571-272-3954. The examiner can normally be reached on M-F 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glen Burgess can be reached on 703-305-4792. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kimberly D Flynn  
Examiner  
Art Unit 2153

KDF



KIMBERLY D. FLYNN  
SUPERVISOR FOR ART UNIT 2153  
TECHNOLOGY CENTER 2100